

§ 41-2.1. Right of survivorship in bank deposits created by written agreement.

(a) A deposit account may be established with a banking institution in the names of two or more persons, payable to either or the survivor or survivors, with incidents as provided by subsection (b) of this section, when both or all parties have signed a written agreement, either on the signature card or by separate instrument, expressly providing for the right of survivorship.

(b) A deposit account established under subsection (a) of this section shall have the following incidents:

- (1) Either party to the agreement may add to or draw upon any part or all of the deposit account, and any withdrawal by or upon the order of either party shall be a complete discharge of the banking institution with respect to the sum withdrawn.
- (2) During the lifetime of both or all the parties, the deposit account shall be subject to their respective debts to the extent that each has contributed to the unwithdrawn account. In the event their respective contributions are not determined, the unwithdrawn fund shall be deemed owned by both or all equally.
- (3) Upon the death of either or any party to the agreement, the survivor, or survivors, become the sole owner, or owners, of the entire unwithdrawn deposit, subject to the following claims listed below in subdivisions a. through e. upon that portion of the unwithdrawn deposit which would belong to the deceased had the unwithdrawn deposit been divided equally between both or among all the joint tenants at the time of the death of the deceased:
 - a. The allowance of the year's allowance to the surviving spouse of the deceased;
 - b. The funeral expenses of the deceased;
 - c. The cost of administering the estate of the deceased;
 - d. The claims of the creditors of the deceased; and
 - e. Governmental rights.
- (4) Upon the death of one of the joint tenants provided herein the banking institution in which said joint deposit is held shall pay to the legal representative of the deceased, or to the clerk of the superior court if the amount is less than two thousand dollars (\$2,000), the portion of the unwithdrawn deposit made subject to the claims and expenses as provided in subdivision (3) above, and may pay the remainder to the surviving joint tenant or joint tenants. Said legal representative shall hold the portion of said unwithdrawn deposit paid to him and not use the same for the payment of the claims and expenses as provided in subdivision (3) above unless and until all other personal assets of the estate have been exhausted, and shall then use so much thereof as may be necessary to pay said claims and expenses. Any part of said unwithdrawn deposit not used for the payment of said claims and expenses shall, upon the settlement of the estate, be paid to the surviving joint tenant or tenants.

(c) This section shall be subject to the provisions of law applicable to transfers in fraud of creditors.

(d) This section shall not be deemed exclusive; deposit accounts not conforming to this section, and other property jointly owned, shall be governed by other applicable provisions of the law.

(e) As used in this section:

- (1) "Banking institution" includes commercial banks, industrial banks, building and loan associations, savings and loan associations, and credit unions.
- (2) "Deposit account" includes both time and demand deposits in commercial banks and industrial banks, installment shares, optional shares and fully paid share certificates in building and loan associations and savings and loan associations, and deposits and shares in credit unions.
- (3) "Unwithdrawn deposit" shall be the amount in the deposit account held by the banking institution at the time of the death of the joint tenant; provided, however, that the banking institution shall not be held responsible for any amount properly paid out of said account prior to notice of such death.

(f) This section does not repeal or modify any provisions of the law relating to estate or inheritance taxes.

(g) A deposit account under subsection (a) of this section may be established by a written agreement in substantially the following form:

"We, the undersigned, hereby agree that all sums deposited at any time, including sums deposited prior to this date, in the _____ (name of institution) in the joint account of the undersigned, shall be held by us as co-owners with the right of survivorship, regardless of whose funds are deposited in said account and regardless of who deposits the funds in said account. Either or any of us shall have the right to draw upon said account, without limit, and in case of the death of either or any of us the survivor or survivors shall be the sole owner or owners of the entire account. This agreement is governed by the provisions of § 41-2.1 of the General Statutes of North Carolina.

Witness our hands and seals, this _____ day of _____, _____.

_____ (Seal)"

(1959, c. 404; 1963, c. 779; 1969, c. 863; 1973, c. 840; 1975, c. 19, s. 14; 1977, c. 671, ss. 1, 2; 1998-69, s. 11; 1999-337, s. 9; 1999-456, s. 59.)